

Framework Convention on Tobacco Control

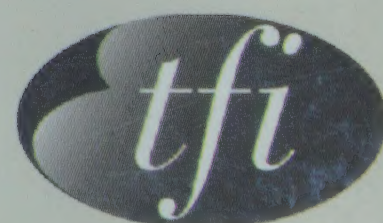
Technical Briefing Series

Paper 1

The Framework Convention/Protocol Approach



World Health Organization



Tobacco Free Initiative

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Framework Convention on Tobacco Control

Technical Briefing Series

The Framework Convention/Protocol Approach

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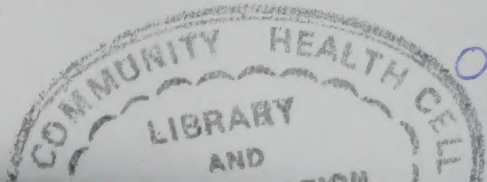
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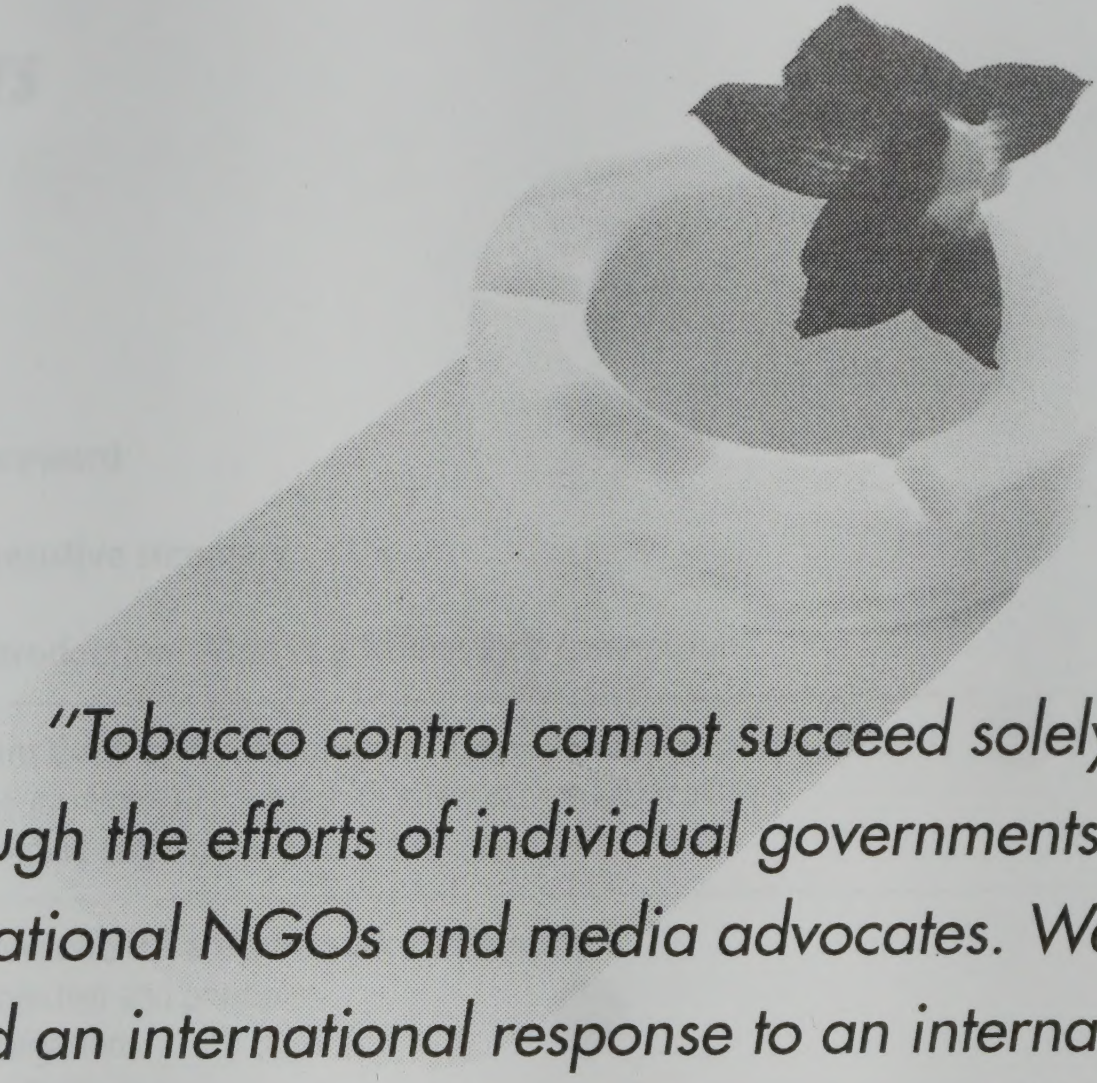
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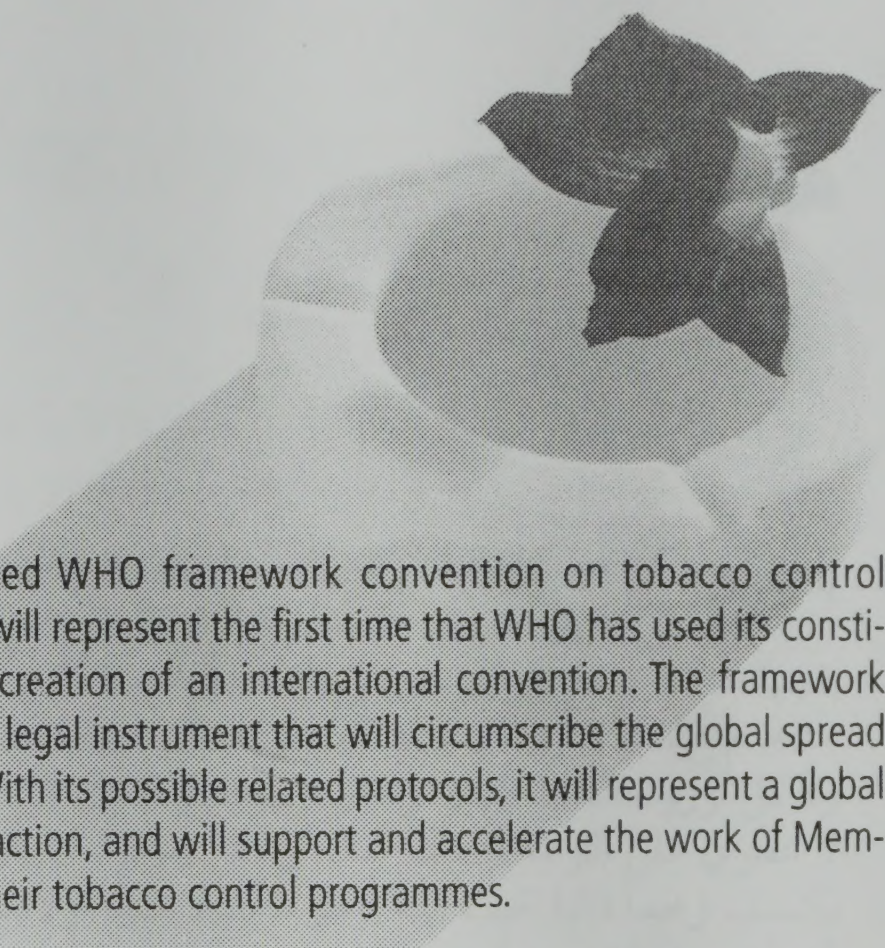
"Tobacco control cannot succeed solely through the efforts of individual governments, national NGOs and media advocates. We need an international response to an international problem. I believe that response will be well encapsulated in the development of an International Framework Convention."

*Dr Gro Harlem Brundtland
Seminar on Tobacco Industry Disclosures,
WHO, Geneva, 20 October 1998*

CONTENTS

Foreward	7
Executive summary	9
Introduction: What is a framework convention?	15
Functions of the framework convention/protocol approach	17
The incremental approach to international law-making	17
Building cognitive and normative consensus	17
Elements of a framework convention	19
Objective and principles	19
Obligations	21
Institutions	24
Implementation mechanisms	27
Law-making processes	28
Final clauses	29
Protocols	33
Relationship of framework convention to protocols	33
Subject matter of protocols	34
Conclusions	35
ANNEX	36
LIST OF SELECTED ENVIRONMENTAL FRAMEWORK CONVENTIONS AND PROTOCOLS	
REFERENCES	37

Foreword

A black and white photograph of a hand holding a lit cigarette. The cigarette is held between the fingers, and a small flower is attached to the filter. The smoke is visible, and the background is a light, textured surface.

The development of a proposed WHO framework convention on tobacco control and possible related protocols will represent the first time that WHO has used its constitutional mandate to facilitate the creation of an international convention. The framework convention will be an international legal instrument that will circumscribe the global spread of tobacco and tobacco products. With its possible related protocols, it will represent a global complement to national and local action, and will support and accelerate the work of Member States wishing to strengthen their tobacco control programmes.

When Member States come to consider a framework convention, they will need to be sensitive to sectoral issues, and to base their discussions on facts rather than on partisan arguments, never losing sight of the public health goals that are the principal reason for tobacco control. The Framework Convention on Tobacco Control Technical Briefing Series is being widely disseminated by the WHO Tobacco Free Initiative with a view to providing Member States with important background information which, it is hoped, will prove of value in their future deliberations.

Dr Derek Yach
Project Manager
Tobacco Free Initiative

موجز

يسمح كل من الاتفاقية الاطارية وأسلوب وضع البروتوكولات لعملية سن القوانين بالمضي في طريق تطوري اذ تبدأ باتفاقية اطارية تضع نظاما عاما لتصرف الأمور فيما يتعلق بقضية ما ثم تضع التزامات وترتيبات مؤسسية أكثر تحديدا في اطار بروتوكولات. وقد استخدم هذا الأسلوب بنجاح كبير في مجال البيئة للتصدي لمشكلات مثل المطر الحامض وتآكل أوزون الطبقة الستراتوسفيرية. وتميل الدول الى الانضمام الى الاتفاقيات الاطارية لأنها لا تنطوي على التزامات ذات شأن. ولكن بمجرد أن ينشأ نظام الاتفاقية الاطارية فانه يمكن أن يكتسب زخما ذاتيا حيث انه يوفر محفلا للمداولات ويمثل مركزا لتبادل الآراء العمومية الدولية وبناء الثقة بين المشاركين.

ومصطلح "الاتفاقية الاطارية" ليس له معنى قانوني تقني كما أن المعاهدات التي يطلق عليها في العادة اسم "اتفاقيات اطارية" تختلف اختلافا كبيرا، فبعضها لا يحتوي الا على أحكام دنيا تنشئ التزامات جد عامة وهيكل مؤسسيا أدنى كعقد مؤتمر للأطراف وانشاء أمانة عامة. والبعض الآخر يحتوي على التزامات وآليات مؤسسية مفصلة، ومن الأمثلة على ذلك أن اتفاقية الأمم المتحدة الاطارية بشأن تغير المناخ تضع اشتراطات مفصلة في مجال الابلاغ وتنشئ هيئات استشارية حول العلم والتنفيذ وآلية مالية.

ويجوز أن تشمل عناصر اتفاقية اطارية ما يلي:

- بيان بالهدف العام للاتفاقية ومبادئها التوجيهية ؛
- التعهدات الأساسية بما فيها الالتزامات المتعلقة باتخاذ تدابير وطنية للتصدي للمشكلة ذات الصلة وتبادل المعلومات والتعاون في مجال البحوث العلمية وتقديم تقارير دورية؛
- انشاء مؤسسات بما في ذلك عقد ما لا يقل عن مؤتمر منتظم للأطراف وانشاء أمانة عامة وكذلك هيئة استشارية علمية وهيئة تنفيذ وآلية مالية، اذا أمكن؛
- انشاء آليات لاستعراض التنفيذ وتعزيز الامتثال وحل المنازعات؛
- وضع أسس عملية لسن القوانين من أجل اعتماد التزامات أكثر خصوصية تكون في شكل بروتوكولات، في أغلب الأحيان.

ويمكن أن تبين بروتوكولات الاتفاقية الاطارية التزامات أكثر خصوصية أو ترتيبات مؤسسية اضافية. ويمكن أن تكون شاملة من حيث موضوعها أو يمكن أن تركز على جزء معين من المشكلة التي تتصدى لها الاتفاقية الاطارية (ملوث معين أو قطاع اقتصادي محدد، مثلا).

执行概要

框架公约/议定书可使法律的制定采取循序渐进的作法，开始时制定一项框架公约，其中规定一个问题领域的总管辖系统，而后在议定书中制定更加具体的义务和组织安排。这一作法在环境领域中的使用取得了巨大成功，它包括解决诸如酸雨和平流层臭氧空洞问题。各国趋向于愿意参加一项框架公约，因为它不需要承担重大义务。然而，公约一旦制定，它本身将产生动力，提供一个讨论讲坛，作为国际公共舆论的焦点，并在参与者中间建立信任。

“框架公约”一词从技术上来讲不具有法定意义，通常描述为“框架公约”的条约差异很大。其中一些仅包括最低限度的条款，制定非常笼统的义务和最基本的组织结构 - 例如一次各方的会议和一个秘书处。其它一些包括更详细的义务和组织机构。例如，联合国气候变化框架公约规定了详细的报告要求，有关学术和实施的咨询团体，以及财务机制。

框架公约的内容可以包括：

- 关于公约总目标和指导原则的说明；
- 基本义务，包括对采取国家措施解决相关问题的承诺，交换信息，开展科学研究方面的合作，以及定期提交报告；
- 机构至少包括参与各方的定期会议和秘书处，也有可能设有一个科学咨询机构，实施机构，和财务机制；
- 审查实施，促进遵守和解决争议的机制；
- 为通过更具体的承诺（通常在议定书中）的法律制定程序。

一项框架公约的议定书可以阐明更具体的承诺或其它组织安排。它们可涵盖其主题问题的方方面面，也可侧重于框架公约所要解决问题的特定部份（例如，一种特殊污染物，或一个特定的经济部门）。

Executive summary

The framework convention/protocol approach allows law-making to proceed incrementally, beginning with a framework convention that establishes a general system of governance for an issue area, and then developing more specific commitments and institutional arrangements in protocols. This approach has been used with considerable success in the environmental arena, to address such problems as acid rain and stratospheric ozone depletion. States tend to be willing to join a framework convention, because it does not entail significant commitments. But, once created, the regime can take on a momentum of its own, by providing a forum for discussions, serving as a focal point for international public opinion, and building trust among participants.

The term “framework convention” does not have a technical legal meaning, and treaties that are usually characterized as “framework conventions” vary considerably. Some contain only minimal provisions, establishing very general obligations and a bare-bones institutional structure – for example, a conference of parties and a secretariat. Others contain more detailed obligations and institutional mechanisms. For example, the United Nations Framework Convention on Climate Change establishes detailed reporting requirements, advisory bodies on science and implementation, and a financial mechanism.

Elements of a framework convention may include:

- a statement of the convention’s overall *objective* and guiding *principles*;
- basic *obligations*, including commitments to take national measures to address the relevant problem, to exchange information, to cooperate in scientific research, and to submit periodic reports;
- *institutions*, including, at a minimum, a regular conference of the parties and secretariat, and also possibly a scientific advisory body, implementation body, and financial mechanism;
- *mechanisms* to review implementation, promote compliance, and resolve disputes;
- a *law-making process* for the adoption of more specific commitments, usually in protocols.

The protocols to a framework convention can set forth *more specific commitments* or *additional institutional arrangements*. They can be comprehensive in their subject matter, or can focus on a particular part of the problem addressed by the framework convention (for example, a particular pollutant, or a particular economic sector).

Résumé d'orientation

La méthode convention-cadre/protocole permet une approche normative progressive. On commence par adopter une convention-cadre qui établit un système général dans un domaine déterminé, pour préciser ensuite peu à peu les engagements et prendre des dispositions institutionnelles dans des protocoles. Cette approche a été suivie avec un succès considérable dans le domaine de l'environnement, face à des problèmes comme les pluies acides et l'appauvrissement de la couche d'ozone stratosphérique. Les Etats acceptent généralement d'adhérer à une convention-cadre qui ne comporte pas d'obligations significatives. Mais, une fois que le cadre est fixé, le mouvement peut prendre un élan nouveau en favorisant les discussions, en servant de point focal pour l'opinion publique internationale et aussi en établissant des liens de confiance entre les participants.

L'expression "convention-cadre" n'a pas une signification technique particulière au sens juridique, et la nature des traités que l'on qualifie généralement de conventions-cadres varie beaucoup. Certains ne contiennent qu'un minimum de dispositions et se bornent à prévoir des obligations très générales et un cadre institutionnel réduit à sa plus simple expression - par exemple une conférence des parties et un secrétariat. D'autres comportent des obligations et des dispositifs institutionnels plus détaillés. Ainsi, la Convention-cadre des Nations Unies sur les changements climatiques comporte des exigences détaillées en matière de notification, des organes consultatifs sur les questions scientifiques et la mise en oeuvre, ainsi qu'un dispositif financier.

Une convention-cadre peut comprendre :

- une déclaration de l'*objectif* général de la convention et de ses *principes* directeurs;
- des *obligations* fondamentales, notamment l'engagement de prendre des mesures nationales pour faire face à un problème particulier, d'échanger des informations, de coopérer à la recherche scientifique, et de soumettre périodiquement des rapports;
- des *institutions*, y compris, au minimum, une conférence périodique des parties et un secrétariat, et peut-être aussi un organe consultatif scientifique, un organe d'exécution et un dispositif financier;
- des *moyens* de faire le point de la mise en oeuvre, de favoriser l'observance et de régler les différends;
- un *processus normatif* pour l'adoption d'engagements plus précis, généralement sous forme de protocoles.

Les protocoles d'une convention-cadre peuvent énoncer *des engagements plus précis* ou *ajouter des dispositions institutionnelles*. Ils peuvent couvrir tous les aspects d'un sujet donné ou mettre l'accent sur une partie déterminée d'un problème traité par la convention-cadre (par exemple, une substance polluante déterminée, un secteur particulier de l'économie).

Резюме

Использование принципа рамочной конвенции/протокола позволяет осуществить процесс законотворчества «по нарастающей», начиная с рамочной конвенции, создающей общую систему руководящих принципов в отношении определенной проблемы, и последующей разработки особых обязательств и определения учрежденческих рамок в протоколах. Такой подход был успешно использован в области окружающей среды для решения таких проблем, как кислотные дожди и истощение озонового слоя в стратосфере. Государства охотно присоединяются к рамочным конвенциям, поскольку это не предполагает значительных обязательств с их стороны. Однако, будучи учрежденным, такой механизм приобретает зачастую собственную динамику, предоставляя форум для дискуссий и выступая в качестве справочно-информационного центра при определении международной точки зрения, и содействуя укреплению доверия между участниками.

Сам термин «рамочная конвенция» не имеет технико-юридического обоснования, поэтому договоры, определяемые в качестве «рамочных конвенций», в значительной мере различаются между собой. Одни из них содержат лишь «минимальные» положения, устанавливая самые общие обязательства и основополагающую учрежденческую структуру, такую как, например, проведение конференций участвующих сторон и создание секретариата. Другие предполагают более точные обязательства и учрежденные механизмы. Так, например, Рамочная конвенция Организации Объединенных Наций по изменению климата четко определяет формы отчетности, консультативные механизмы по вопросам научных исследований и практики, а также финансовый механизм.

Элементы рамочной конвенции могут включать:

- заявления в отношении общей цели и руководящих принципов конвенции;
- основные обязательства, включая обязательства в отношении национальных мер для решения соответствующей проблемы, обмена информацией, сотрудничества в научных исследованиях, а также представление регулярных докладов;
- учрежденные структуры, включая в качестве минимального требования проведение конференций участвующих сторон на регулярной основе и учреждение секретариата, а также, возможно, учреждение консультативного органа по научным исследованиям, исполнительных органов и финансовых механизмов;
- соответствующие механизмы для рассмотрения вопросов, связанных с осуществлением, содействием выполнению принятых обязательств и решением споров;
- специальный процесс законотворчества для принятия более конкретных обязательств, обычно оформляемых как протоколы.

Протоколы рамочной конвенции смогут определять более конкретные обязательства или дополнительные учрежденные структуры. Они могут быть комплексными в отношении главного предмета или могут обращать особое внимание на конкретную часть проблемы, рассматриваемой в рамочной конвенции (например, на особый «загрязняющий компонент» или особый экономический сектор).

Resumen de orientación

El sistema de los convenios marco o protocolos permite que el proceso normativo avance por pasos sucesivos, partiendo de un convenio marco que establece un sistema general de gobierno para una esfera determinada hasta llegar a compromisos y arreglos institucionales más específicos en forma de protocolos. Este procedimiento se ha aplicado con notable éxito en el ámbito del medio ambiente para abordar problemas como la lluvia ácida y el enrarecimiento del ozono en la estratosfera. Los Estados están más fácilmente dispuestos a adherirse a un convenio marco porque no les exige grandes compromisos. Pero este régimen, una vez puesto en marcha, puede ir tomando impulso por sí mismo ya que sirve de foro para el debate, actúa de punto focal para la opinión pública internacional e instaura lazos de confianza entre los participantes.

El término convenio o «convención marco» no tiene un significado preciso en técnica jurídica y los tratados que se suelen caracterizar como «convenios marco» varían considerablemente. Algunos contienen tan sólo un mínimo de disposiciones, en las que se establecen obligaciones muy generales y una estructura institucional elemental, por ejemplo una conferencia de las partes y una secretaría. Otros prevén obligaciones y mecanismos institucionales más detallados. Por ejemplo, la Convención Marco de las Naciones Unidas sobre el Cambio Climático establece disposiciones detalladas sobre la presentación de informes, órganos consultivos en materia científica y de ejecución de la convención y un mecanismo financiero.

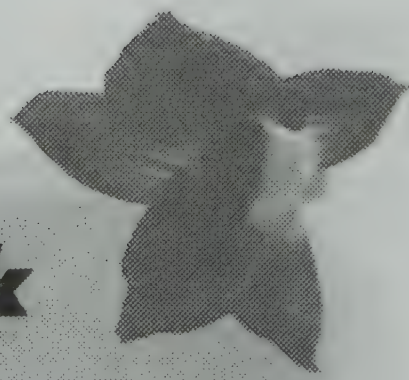
Un convenio marco puede comprender elementos como los siguientes:

- una declaración del *objetivo* general de la convención y *principios* orientadores;
- *obligaciones* básicas, con el compromiso de adoptar medidas a nivel nacional para abordar el problema de que se trate, intercambiar información, cooperar en la investigación científica y presentar informes periódicos;
- *instituciones*, incluidas, como mínimo, una conferencia periódica de las partes y una secretaría y también eventualmente un órgano consultivo científico, un órgano de ejecución y un mecanismo financiero;
- *mecanismos* para examinar la ejecución del convenio, promover su cumplimiento y resolver las diferencias;
- un *proceso normativo* para la adopción de compromisos más específicos, de ordinario en forma de protocolos.

Los protocolos en un convenio marco establecen *compromisos más específicos* o *disposiciones institucionales complementarias*. Pueden ser de ámbito global por su contenido o centrarse en un aspecto particular del problema que es objeto del convenio marco (por ejemplo, un contaminante o un sector económico en particular).

Introduction

What is a framework convention?



The term “framework convention” does not have a technical meaning in international law. It has been used to describe a variety of international agreements whose principal function is to establish a general system of governance for an issue area, and not detailed obligations. (See list of environmental framework conventions and protocols in Annex 1.) An analogy can be drawn between a framework convention and the constitution of an international organization such as WHO, both of which are primarily constitutive rather than regulatory in character.

Box 1. What is a framework convention?

- No technical meaning - wide variety.
- Creates a general system of governance, not specific obligations.
 - General objectives, principles and obligations.
 - Basic institutions and decision-making mechanisms.
- Specific obligations developed in protocols to the framework convention.

The so-called framework convention/protocol approach to international lawmaking allows States to proceed incrementally. First, the framework convention establishes the general norms and institutions of the regime – for example, its objective, principles, basic obligations, and institutions, as well as procedures regarding decision-making, finance, dispute settlement, and amendment. Then, the protocols build on the parent agreement through the elaboration of additional (or more specific) commitments and institutional arrangements.

In the environmental field, the first framework convention was the 1976 Barcelona Convention for the Protection of the Mediterranean Sea against Pollution, which was negotiated under the auspices of the United Nations Environment Programme (UNEP), and now has protocols addressing, *inter alia*, the dumping of hazardous wastes, land-based sources of marine pollution, emergency response to oil spills, and specially protected areas. Since the Barcelona Convention, UNEP has sponsored the negotiation and adoption of seven other regional seas agreements, including the 1983 Cartagena Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention) and the 1986 Noumea Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (SPREP Convention).

Box 2. Examples of the Framework Convention/Protocol Approach

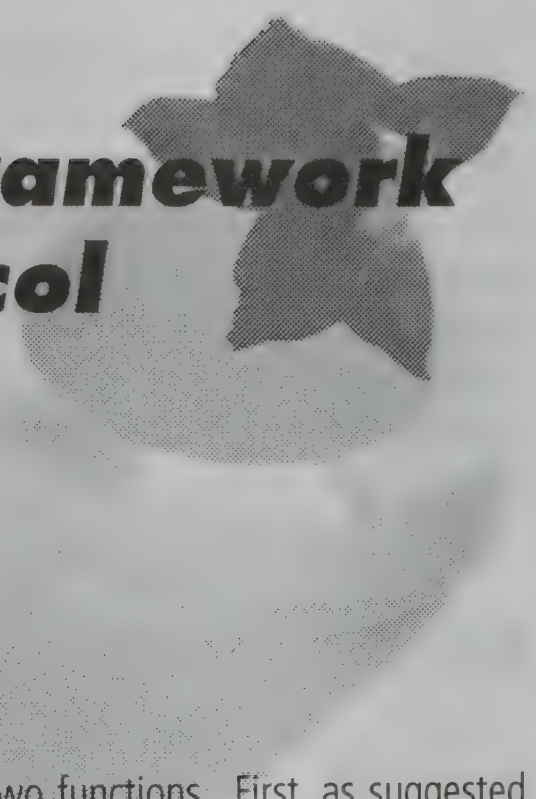
- Long-Range Transboundary Air Pollution Convention (LRTAP), 1979.
- UNEP regional seas agreements (e.g., Barcelona Convention).
- Vienna Ozone Convention, 1985.
- Protocols on specific pollutants sulfur emissions nitrogen oxides, volatile organic compounds, persistent organic pollutants.
- Protocols on specific problems (oil spills, ocean dumping, protected areas).
- Montreal Protocol on Substances that Deplete the Ozone Layer, 1987.

Other framework conventions in the environmental field include:

- The 1979 Convention on Long-range Transboundary Air Pollution (LRTAP), which was adopted under the auspices of the United Nations Economic Commission for Europe (ECE) to address the problem of acid rain in Europe and North America. The parties to LRTAP have adopted seven protocols, which establish specific obligations relating to the various sources of transboundary air pollution, including sulfur emissions, nitrogen oxides, volatile organic compounds, heavy metals, and persistent organic pollutants.
- The 1985 Vienna Convention for the Protection of the Ozone Layer, which was negotiated under UNEP auspices, and led to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, which establishes specific limitations on the production and consumption of ozone-depleting substances.
- The 1992 United Nations Framework Convention on Climate Change (UNFCCC), which was negotiated under the auspices of the United Nations General Assembly, and led to the adoption of the 1997 Kyoto Protocol.

Some conventions that are not ordinarily classified as “framework conventions” share many of the same features, including the 1973 Convention for the Prevention of Pollution from Ships (MARPOL). Like a framework convention, MARPOL includes only very general provisions (for example, concerning institutional and jurisdictional matters). Specific regulations are contained in “annexes” to MARPOL, which address various types of vessel-source pollution (oil, carriage of hazardous substances, sewage, garbage, etc.). Conversely, some conventions that are often described as framework conventions are, in fact, more substantive in character – for example, the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, which establishes a detailed regulatory regime requiring prior informed consent for transboundary shipments of hazardous wastes.¹ A borderline case is the 1992 Convention on Biological Diversity, which establishes a general framework of governance for biological diversity issues, but includes much more specific provisions than the typical framework convention (for example, regarding *in-situ* and *ex-situ* conservation, and access to genetic resources and technology).

Functions of the framework convention/protocol approach



The framework convention/protocol approach serves two functions. First, as suggested above, it allows work to proceed incrementally, starting with the establishment of a general framework for action, and only later attempting to elaborate more substantive commitments. Second, it can make the adoption of specific commitments more likely through the promotion of consensus about the relevant facts ("cognitive consensus") and about the appropriate legal response ("normative consensus").²

Box 3. When does a framework convention make sense?

- Political consensus to take strong substantive measures is lacking
- Scientific understanding still evolving
- Problem itself changeable

The incremental approach to international law-making

The framework convention/protocol approach allows States to address a problem in a step-by-step manner, rather than all at once. States tend to be willing to join a framework convention because it does not contain stringent obligations. Thus, they can begin to address a problem without waiting for a consensus to emerge on appropriate response measures. For example, when both LRTAP and the Vienna Ozone Convention were adopted, many States remained unconvinced of the need for action. Nevertheless, even sceptical States acquiesced in the adoption of these conventions, since the conventions did not commit them to take any specific measures.³

Box 4. Functions of a framework convention

- Establishes a general system of governance
- Allows States to proceed incrementally, through separate protocols
- Encourages cognitive consensus
- Encourages political consensus

The framework convention/protocol approach also allows States to address different aspects of a problem in separate protocols. This gives States greater flexibility in deciding which commitments they are willing to accept. For example, under LRTAP, a State might choose to accept limitations on its nitrogen oxide emissions but not its sulfur emissions.⁴ If sulphur and nitrogen oxide emissions were addressed in a single legal instrument, then States that were willing to control one but not the other might not join, and less progress would be achieved. (A counter-example, however, is the Montreal Protocol, which addresses all ozone-depleting substances comprehensively, but which nevertheless has gained widespread acceptance.)

Building Cognitive and Normative Consensus

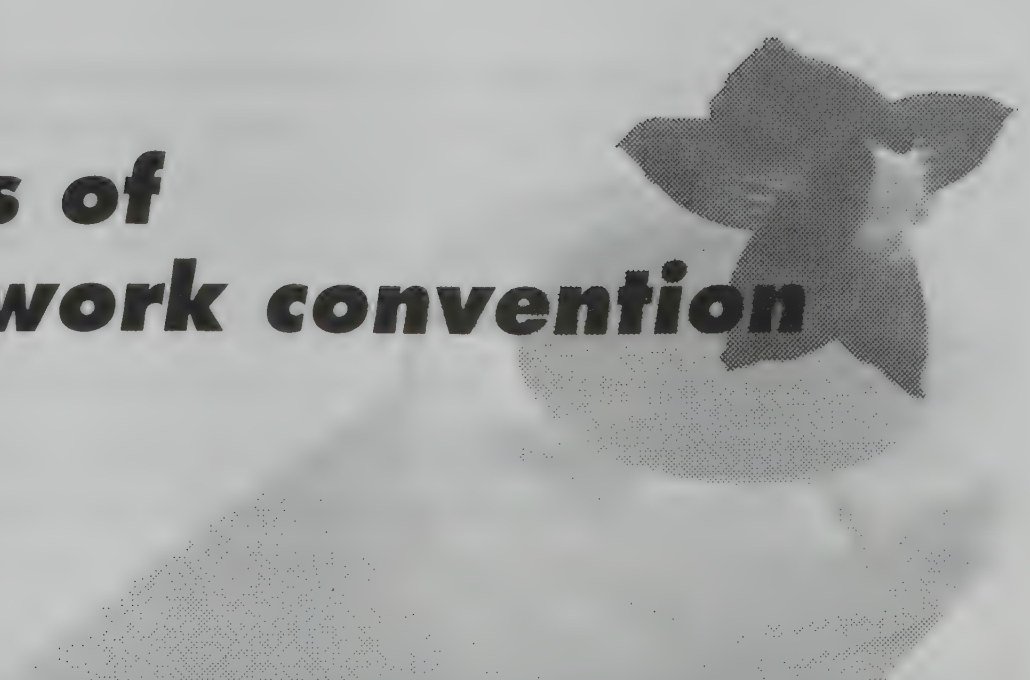
A second function of the framework convention/protocol approach is to create positive feedback loops, which facilitate the adoption of protocols containing specific substantive commitments.

First, the framework convention can help reduce uncertainties and produce agreement about the relevant facts by requiring parties to submit national reports, subjecting these reports to international review, and encouraging scientific research and assessments. For example, LRTAP led to (a) the creation of a Working Group on Effects which organized collaborative research on the environmental damage caused by acid rain, and (b) financing of the European Monitoring and Evaluation Programme (EMEP), which engaged in sophisticated monitoring of transboundary pollution flows. Both efforts produced not only better scientific understanding of the causes and effects of acid rain, but also consensual knowledge – that is, knowledge accepted by the key actors in the regime.⁵ As Thomas Gehring has noted, “[A]t stake is the joint appraisal and interpretation of scientific findings in an authoritative way within the regime, for political negotiations can set aside the consideration of scientific issues only if mutually acceptable scientific knowledge can be developed by a forum authorized by the participating actors. Thus, the degree of scientific clarity is less important than the degree of unity in appraising the scientific “state of the art.””⁶

This points to one important lesson for the proposed framework convention on tobacco control (FCTC): even though scientific consensus already exists about the harmful effects of tobacco, the FCTC could still play a crucial role in promoting acceptance of this knowledge by participating States.

Second, the institutions established by a framework convention (including, in particular, regular meetings of the parties) can help generate normative consensus, by providing an ongoing forum for discussion and negotiation, serving as a focus for international public opinion, and building trust among the participants. In effect, once a framework convention is adopted, the international law-making process can take on a momentum of its own. States that were initially reluctant to undertake substantive commitments, but that acquiesce in the seemingly innocuous process set in motion by the framework convention, feel increasing pressure not to fall out of step as that process gains momentum. The creation of mechanisms to provide financial assistance or technology can advance this process by helping to build support among States and by improving their capacity to take meaningful action.

Elements of a framework convention



Framework conventions come in many shapes and sizes. Some contain only bare-bones provisions (for example, the Vienna Ozone Convention), while others contain more detailed obligations and institutional mechanisms (for example, the so-called United Nations Framework Convention on Climate Change, which actually is considerably more substantive than most other framework conventions).

The following sections describe the various types of provisions found in environmental framework conventions. A framework convention could potentially include other types of provisions, which are not discussed below – for example, provisions on State succession, treaty interpretation, and territorial application.⁷ Conversely, not all of the elements discussed below might be deemed appropriate for a framework convention on tobacco control. The choice of provisions to include in a framework convention depends on the subject matter of the convention, as well as on the political will of the participating States.

Box 5. Elements of a framework convention

- Objective and principles
- General obligations
- Institutions
- Implementation mechanisms
- Decision-making procedures
- Final clauses

Objective and Principles

The inclusion of provisions setting forth (a) the convention's objective, and (b) the principles that should guide its development, can help build normative consensus among States. Even if States cannot agree on what should be done to address a problem, they may be able to agree on a common goal (e.g., eradication of the harmful health effects of tobacco), and on the general principles that should guide their efforts to achieve that goal.

Traditionally, a convention's objective and guiding principles have been set forth in the convention's preamble.⁸ However, a number of recent environmental conventions instead contain separate articles addressing these matters. Placing a convention's objective and

principles in separate articles serves to highlight these provisions, and may give them greater legal status. A convention's preamble serves merely to provide a context for interpreting its provisions, whereas the articles of the convention, depending upon their language, may establish legal standards that could arguably be applied by a judicial tribunal.

Objective

A convention's objective not only enunciates the parties' overarching purpose, but can also serve to acknowledge a problem and help legitimize it as a matter of international concern.⁹

Box 6. Objectives and principles

- May be easier to achieve agreement on fundamental goals and principles than on what to do substantively
- Examples of objectives:
 - UNFCCC: "prevent dangerous anthropogenic interference with the climate system"
 - LRTAP: "reduce and prevent air pollution"

The Vienna Ozone Convention sets forth its objective in the preamble, which states that the parties are "determined to protect human health and the environment against adverse effects resulting from modifications of the ozone layer".

By contrast, the UNFCCC sets forth its "ultimate objective" in a separate article: "The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system." (UNFCCC, article 2)

Similarly, the LRTAP includes an article expressing the parties' general intent as follows: "The Contracting Parties, taking due account of the facts and problems involved, are determined to protect man and his environment against air pollution and shall endeavour to limit and, as far as possible, gradually reduce and prevent air pollution including long-range transboundary pollution." (LRTAP, article 2)¹⁰

Principles

Principles set forth general standards that guide the application and future development of a treaty, but do not impose commitments or obligations on States to take any particular actions. As the philosopher Ronald Dworkin has explained, both legal principles and legal rules point to particular decisions about legal obligation in particular circumstances, but they differ in the character of the direction they give. Rules are applicable in an all-or-nothing fashion... [A principle] states a reason that argues in one direction, but does not necessitate a particular decision... All that is meant, when we say that a particular principle is a principle of our law, is that the principle is one which officials must take into account, if it is relevant, as a consideration inclining in one way or another.¹¹

For example, the UNFCCC states that the parties, in achieving the objective of the convention and implementing its principles, shall be "guided" by the following principles:

- The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities....
- The specific needs and special circumstances of developing country Parties ... should be given full consideration.
- The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects....
- The Parties have a right to, and should, promote sustainable development....
- The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties....

These principles set the terms of debate – the general framework – for the development of the climate change regime and provide benchmarks against which to evaluate particular proposals. But they do not determine which measures should or should not be taken. Instead, this question must be answered through further negotiations.

Obligations

Ordinarily a framework convention contains only quite general obligations, leaving the development of more specific commitments to protocols or regulatory annexes. In the case of LRTAP, these general obligations are termed "fundamental principles" (LRTAP, articles 2-5), but – as is generally the case in treaty law – the substantive content, not the title, of these provisions determines their legal character.

In some cases, a "framework convention" may also contain rather *specific obligations*. In these cases, the line between a framework and a substantive convention becomes blurred. For example, although the mandate of the 1992 climate change negotiations was to develop a "framework convention" containing "appropriate commitments",¹² some States sought to include a specific target and timetable to limit greenhouse gas emissions, and the final text contains a nebulous provision to this effect.¹³

Framework conventions (or protocols) that impose costly obligations may differentiate among countries and establish lesser obligations for developing countries.¹⁴ The UNFCCC, Biodiversity Convention, and Montreal Protocol all include differentiated obligations. The Montreal Protocol, for example, gives developing countries a 10-year grace period to comply with its requirements, while the UNFCCC imposes quantitative limitations on greenhouse gas emissions only on developed countries. Which countries qualify as "developing" and "developed" can be defined by means of either objective criteria or lists.¹⁵

Alternatively, conventions may differentiate among states on other bases. For example, conventions that address trading issues may differentiate between the obligations of producing and consuming States.¹⁶

Box 7. General obligations

- National measures to combat the problem
- Education, training, public awareness
- Cooperation in scientific research
- Reporting
- Financial assistance

National policies and measures

Usually a framework convention will contain a generic obligation to adopt national policies and measures to promote the convention's objective (e.g., tobacco control). Examples include the following:

Each Contracting Party undertakes to develop the best policies and strategies including air quality management systems... (LRTAP, article 6)

- The Parties shall take appropriate measures in accordance with the provisions of this Convention and of those protocols in force to which they are party to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer.
- To this end the Parties shall, in accordance with the means at their disposal and their capabilities: ... (b) Adopt appropriate legislative or administrative measures and co-operate in harmonizing appropriate policies to control, limit, reduce or prevent human activities under their jurisdiction or control should it be found that these activities have or are likely to have adverse effects resulting from modification or likely modification of the ozone layer. (Vienna Ozone Convention, articles 2(1) & (2)(b))

All parties ... shall ... formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change. (UNFCCC, article 4(1)(b))

The Contracting Parties shall individually or jointly take all appropriate measures in accordance with the provisions of this Convention and those Protocols in force to which they are party, to prevent, abate and combat pollution of the Mediterranean Sea area and to protect and enhance the marine environment in that sea. (Barcelona Convention, article 4)

Each Contracting Party shall, in accordance with its particular conditions and capabilities: (a) Develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes which shall reflect, inter alia, the measures set out in this Convention relevant to the Contracting Party concerned.... (Biodiversity Convention, article 6).

Education, training, cooperation, research

Other general obligations contained in framework conventions may address (a) education, training and public awareness;¹⁷ (b) cooperation in scientific research;¹⁸ and (c) exchange of information.¹⁹ These obligations have tended to be non-controversial.

Reporting

Most framework conventions also include an obligation on States to report on either (a) the activities that give rise to the problem (tobacco cultivation, trade in tobacco, tobacco use), and/or (b) the measures that a State is taking in response (for example, policies to promote crop switching, or advertising restrictions).²⁰ Reporting requirements can serve several important functions. National reporting encourages States to undertake a more comprehensive and systematic review of their existing policies, and may act as a catalyst for better coordination and planning among the various parts of national governments. Reporting can also serve an educational function, allowing States to benefit from each others' experiences. From an implementation standpoint, reporting promotes transparency and puts pressure on States by holding each State party up to domestic and international scrutiny.²¹ Finally, reporting can provide useful information for assessing the effectiveness of a treaty and the need for further action.

Because of the important functions of national reporting, reporting obligations can be more controversial than other general commitments in a framework convention. Indeed, in the climate change negotiations, some developing countries objected to the term "reporting", contending that it suggested an intrusive, interventionist process. As a result, the UNFCCC instead uses the more neutral phrase "communication of information".²²

Moreover, in some cases reporting obligations have been differentiated, with distinct obligations applying to developed and developing countries. For example, the UNFCCC requires developed States to provide more detailed information on their implementation measures, along with "a specific estimate of the effects that these policies and measures ... will have" on greenhouse gas emissions, and establishes different reporting timetables for developed and developing countries.²³

Financial assistance

The UNFCCC is the first framework convention in the environmental field to impose obligations on Western developed countries to provide financial assistance to developing countries. Other framework convention regimes either do not address financial issues at all (for example, LRTAP), or do so in a protocol rather than in the framework convention itself (for example, the financial provisions of the ozone regime were adopted as an amendment to the Montreal Protocol). In contrast, the UNFCCC requires country parties belonging to the Organization for Economic Cooperation and development (OECD) to provide full funding for developing country reports, as well as unspecified amounts for projects to mitigate or adapt to climate change.²⁴ Under the UNFCCC, financial assistance can be provided multilaterally through the Convention's financial mechanism (entrusted to the Global Environment Facility) or bilaterally.

The UNFCCC does not specify the exact rationale for these financial obligations on Western developed countries, but suggests that the obligations result from the historical responsibility of developed countries in causing climate change, and/or their greater capabilities to address this global problem.²⁵

The Biodiversity Convention contains similar financial provisions, requiring developed countries to provide "new and additional financial resources to enable developing country

Parties to meet the agreed full incremental costs to them of implementing measures which fulfil the obligations of this Convention".²⁶

Both the UNFCCC and the Biodiversity Convention recognize that implementation of the convention by developing countries will depend on the effective implementation of developed countries' financial obligations.²⁷

Other obligations

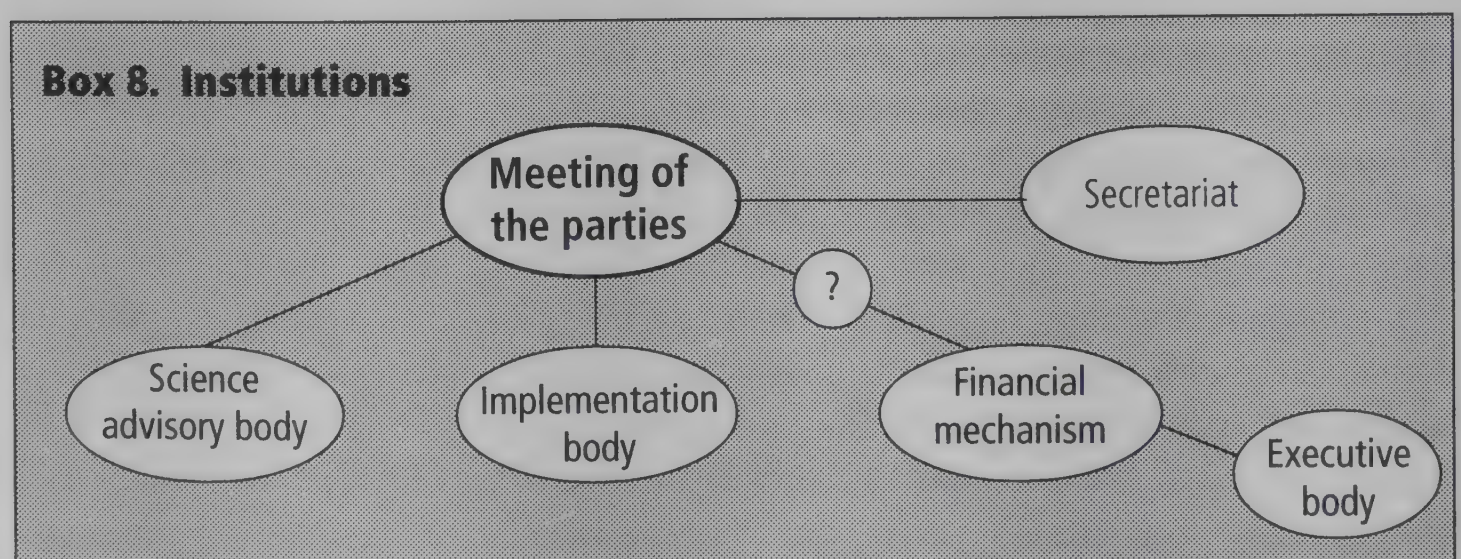
A framework convention may also contain more specific obligations relating to its particular subject matter. For example, the UNFCCC contains obligations concerning:

- an aim to limit greenhouse gas emissions to 1990 levels in the year 2000;
- integration of climate change considerations into each party's social, economic and environmental policies and actions;
- coordination of economic and administrative instruments, such as taxes, subsidies and charges.

Institutions

A critical function of framework conventions is to create the basic institutions that will provide ongoing governance of an issue area. Early environmental conventions that did not establish permanent institutions have become "sleeping treaties" and have had little effect.²⁸

Environmental framework conventions reflect a wide variety of institutional arrangements, ranging from a skeletal structure (for example, a conference of the parties and secretariat)²⁹ to a broader range of institutions (including institutions on science, implementation and finance).³⁰



Conference/meeting of the parties

The central institution created by framework conventions has been the meeting of the parties. These regular meetings keep governmental and public attention focused on an issue, provide a forum for ongoing negotiations, and help build a sense of community among the participating States.

Meetings of the parties may be referred to as conferences of the parties (COPs) or, in the case of LRTAP, as the "executive body". (The LRTAP Executive Body includes all States parties, and thus is in essence a meeting of the parties rather than a true "executive body".³¹) The meeting may also be held as part of the meeting of a standing organ of an international institution, such as the Marine Environment Protection Committee (MEPC), of the International Maritime Organization (IMO), which serves as the meeting of the parties to MARPOL.

The meeting of the parties is, in essence, the supreme decision-making body of a convention.³² However, environmental framework conventions do not give their meetings of the parties general legislative authority.³³ Instead, the authority of the meeting of the parties is carefully circumscribed, and might include such specific tasks as:³⁴

- developing methodologies and formats for national reports;
- reviewing national reports;
- establishing subsidiary bodies;
- making recommendations;
- reviewing the adequacy of the convention's provisions and authorizing additional negotiations;
- adopting protocols.

Because the meeting of the parties lacks legislative authority, additional commitments generally require either an amendment to the convention or a new legal instrument (for example, a protocol). Moreover, "adoption" of a protocol is generally only a preliminary step, and protocols must still be ratified by States in order to enter into force.

One important task of the meeting of the parties is to adopt its rules of procedure (and possibly also financial rules). Given the importance of these rules of procedure (and, in particular, the rules about the majorities needed for different kinds of decisions), framework conventions generally require that rules of procedure be adopted by consensus.³⁵

Secretariat

Although a treaty need not establish a secretariat (for example, under the Antarctic Treaty system, the host government of the annual meeting of the parties serves as the secretariat during that year), all environmental framework conventions to date have done so.

Secretariat responsibilities may be assigned to an existing organization (LRTAP designated the United Nations Economic Commission for Europe (ECE) as its secretariat) or to a newly-created institution (for example, the parties to the UNFCCC decided to establish a separate secretariat, not use an existing organization).

Secretariat functions vary widely, ranging from purely administrative tasks (arranging and servicing the meetings of the parties, transmitting reports, coordinating with other international organizations)³⁶ to more substantive functions (preparing reports based on information received from the parties, monitoring compliance with treaty obligations, giving guidance and advice to the parties).³⁷ For example, despite rather modest language in the UNFCCC itself,³⁸ the Climate Change Secretariat has assumed an increasingly important role, for ex-

ample, by proposing policy options that seek to bridge differences among States, organizing the UNFCCC's review process, and serving as an information clearing-house.

Other institutions

A framework convention might also establish other institutions to provide the parties with scientific advice, review implementation and compliance questions, and provide financial assistance to help States with implementation.

Scientific advisory committee. Environmental regimes use a wide variety of institutional arrangements to obtain scientific information and advice. In some cases, scientific information and advice is provided by a semi-autonomous group (for example, the Inter-governmental Panel on Climate Change, which was jointly established by UNEP and the World Meteorological Organization (WMO) in 1988, several years before the UNFCCC negotiations began). Alternatively, scientific advice can be provided by *ad hoc* working groups (for example, LRTAP's Working Group on Effects, which provided detailed information on the environmental effects of acid rain, or the Montreal Protocol's technical advisory panels). Finally, a framework convention can create a permanent scientific advisory body.

Both the UNFCCC and the Biodiversity Convention establish standing scientific advisory bodies, in order to provide advice to the parties about the state of scientific knowledge and to identify innovative, efficient and state-of-the-art technologies.³⁹ The composition of these scientific advisory bodies is similar to a meeting of the parties: they are open to participation by all States, and are composed of "government representatives competent in the relevant field of expertise". In effect, they are semi-political bodies, rather than independent, authoritative sources of information and advice.

Implementation committee. The UNFCCC is the first framework convention to establish a Subsidiary Body for Implementation (SBI). SBI's principal function is to help review the reports submitted by parties and determine the aggregate effect of the steps that parties are taking.⁴⁰ Like the UNFCCC's scientific advisory committee, SBI is open-ended, and is composed of government representatives with climate change expertise. In contrast, the Implementation Committee established by the Montreal Protocol has a limited membership (although it too consists of state representatives rather than independent experts) and can consider questions regarding an individual State's compliance with the Protocol and make recommendations on possible penalties for non-compliance.

Financial mechanism. Early framework conventions such as the Barcelona Convention, LRTAP and the Vienna Ozone Convention did not establish any financial mechanism to assist States (particularly developing countries) with implementation. LRTAP still does not have a financial mechanism, but the ozone regime now has a Multilateral Fund established in 1990 by the London Amendments to the Montreal Protocol. The Multilateral Fund is governed by an Executive Body composed of 20 members, split equally among representatives of developed and developing country parties.

The UNFCCC and the Biodiversity Convention are the first framework conventions to include a financial mechanism to assist developing countries.⁴¹ Neither convention establishes a separate institution to serve as the financial mechanism; instead, both leave it up to the conference of the parties to decide who shall carry out the operation of the mechanism.

At present, the Global Environment Facility (GEF) serves as the financial mechanism for both conventions.

Implementation Mechanisms

Most framework conventions have only modest implementation machinery, focused primarily on national reporting (see paragraphs above 27-29). In part, the lack of implementation mechanisms follows from the lack of strong substantive commitments in framework conventions. The development of both commitments and implementation mechanisms are instead deferred until the negotiation of protocols.

Box 9. Implementation procedures

- National reporting
- International review
- Dispute resolution
 - Traditional dispute settlement
 - Non-compliance/consultative procedures

International monitoring and review

Most framework conventions do not provide for detailed review of the performance of individual parties. Monitoring and review procedures have been developed, if at all, only pursuant to protocols.⁴²

An exception is the UNFCCC, under which each developed country report is subjected to an "in-depth" review by outside experts, involving a visit to the country concerned to gather information and to meet governmental officials and nongovernmental organizations.

In addition, the Barcelona Convention includes provisions relating to monitoring (requiring each State party to designate a monitoring authority),⁴³ liability and compensation,⁴⁴ and compliance.⁴⁵

Dispute settlement

The dispute resolution provisions of environmental framework conventions have generally given priority to non-binding methods of dispute resolution, providing for binding dispute resolution only by mutual consent of the parties.

LRTAP provides that, in case of disputes between two or more contracting parties, the parties shall seek a resolution by negotiation or any other means acceptable to the parties to the dispute.

The Vienna Ozone Convention and the UNFCCC have similar dispute resolution provisions, providing for compulsory conciliation if the parties cannot agree to any other method of dispute resolution.⁴⁶ Conciliation is a non-binding dispute settlement procedure involving referral of a dispute to a commission that examines the facts and makes recommendations

for a settlement. Under the Vienna Ozone Convention and the UNFCCC, conciliation commissions are composed of equal numbers of members appointed by each party, and may make "recommendatory" awards, which the parties are to "consider in good faith". If both parties agree in advance, disputes may be submitted to the International Court of Justice or to binding arbitration.

Non-compliance/consultative procedures

Because the adversarial, backward-looking and bilateral character of traditional dispute settlement has seemed inappropriate for multilateral environmental conventions, several environmental regimes have developed procedures aimed at helping a State to implement its obligations in the future, rather than adjudicating guilt for past violations. In both the acid rain and ozone regimes, non-compliance procedures were developed pursuant to protocols, but the UNFCCC itself provides for the development of a similar type of procedure (referred to as a "multilateral consultative process") to resolve questions regarding the implementation of the Convention.⁴⁷

Law-making processes

Because framework conventions do not give legislative powers to any of their institutions, law-making must proceed by means of either amendment of the convention or the adoption of protocols.

Box 10. Law-making processes

- Amendment
- Negotiation and adoption of protocols

Amendment

The amendment procedures specified by framework conventions tend to be quite similar.⁴⁸ A proposed amendment must be communicated a specified period in advance of the meeting of the parties (or the diplomatic conference) at which it is to be considered. LRTAP requires that amendments be adopted by consensus, but the Barcelona Convention, the Vienna Ozone Convention and the UNFCCC all provide that, if consensus is impossible, an amendment may be adopted by a three-quarters majority vote. An amendment generally must be ratified or otherwise accepted by two-thirds (LRTAP) or three-quarters (Barcelona Convention, Vienna Ozone Convention, UNFCCC) of the convention parties in order to enter into force, and then binds only those parties that have accepted it.

Protocols

With the exception of LRTAP, all environmental framework conventions specifically provide for the adoption of protocols. The Barcelona Convention requires that protocols be adopted by a diplomatic conference, whereas the Vienna Ozone Convention and the UNFCCC give this power to the meeting of the parties.

Both the Barcelona Convention and the Vienna Ozone Convention set forth detailed rules regarding the amendment of protocols, including the requirements for adoption and entry into force.⁴⁹ For example, the Vienna Ozone Convention requires that amendments to protocols be adopted by a two-thirds majority vote, and be accepted by two-thirds of the protocol parties in order to enter into force. This proved problematic when the parties to the Montreal Protocol wished to adopt the London Amendments, which, under the Vienna Ozone Convention rule, should have required 38 ratifications in order to enter into force. The London Conference, however, wanted the amendments to enter into force more quickly, and therefore specified that only 20 ratifications were sufficient for entry into force, even though this was technically inconsistent with the Vienna Convention.

To avoid such problems, the UNFCCC merely provides for the adoption of protocols by the conference of the parties, but leaves it up to each protocol to set its own rules regarding ratification, entry into force, and amendment.⁵⁰

Final clauses ⁵¹

Signature

With regard to multilateral conventions, signature is ordinarily merely a preliminary step by which a State manifests its consent to be bound. The signature provision of a convention usually includes the following elements:

Box 11 Final Clauses

- Signature
- Ratification, approval, accession
- Entry into force
- Reservations
- Withdrawal
- Relation to other treaties
- Depositary
- Authentic texts

- **Who** may sign (and who is thereby eligible to become a party to the convention). For example, the UNFCCC permits signature by "State Members of the United Nations or of any of its specialized agencies or that are Parties to the Statute of the International Court of Justice and by regional economic integration organizations [i.e., the European Community]".⁵²
- **Where** signature should take place for example, the provision might designate the headquarters of the organization sponsoring the negotiation.⁵³
- **When** signature may take place. Often, a treaty will specify both a beginning date (when the treaty is "open for signature") and a closing date.⁵⁴ After the closing date, States that wish to join the convention must do so by means of "accession".

Ratification, acceptance, approval or accession

Ratification, acceptance, approval and accession are all terms signifying an act by which a State expresses its consent to be bound by a treaty.⁵⁵ Accession differs from the other three in that it is the method used by a State that wishes to become a party to a treaty that it has not signed, after the period for signature has elapsed. Generally, a treaty will specify that instruments of ratification, acceptance, approval or accession should be deposited with the depositary of the treaty.

Entry into force

The entry-into-force provisions of framework conventions usually specify that the convention will enter into force (i.e., become legally binding) 90 days after it has been ratified by a specified number of States. The required number of ratifications varies from 20 in the case of the Vienna Ozone Convention to 50 for the UNFCCC.⁵⁶ A low number allows a convention to enter into force more quickly, but, if too low, may diminish the convention's credibility. Moreover, if the first conference of the parties is delegated significant decision-making authority (for example, to adopt rules of procedure, establish reporting rules, and so forth), then an easy entry-into-force rule may mean that these decisions are made by only a relatively few States. On the other hand, a strict rule might mean that entry into force is substantially delayed.

The 90 day interim period between the required number of ratifications and entry into force gives states time to make any final legal or administrative arrangements, and to provide domestic notice of the impending entry into force of the convention.

Reservations

Because environmental framework conventions seek to ensure a level playing field among the parties and to minimize "free riding", they often do not allow States to make reservations.⁵⁷ In the absence of a specific article in a convention addressing the issue of reservations, then the default rule found in the Vienna Convention on the Law of Treaties applies, which allows States to make reservations so long as these reservations do not defeat the "object and purpose" of the convention.⁵⁸

Withdrawal

Framework conventions generally give parties the right to withdraw.⁵⁹ Generally, withdrawal is allowed only after a certain period of time has elapsed since the convention's entry into force (for example, LRTAP allows withdrawal "At any time after five years from the date on which the present Convention has come into force with respect to a Contracting Party", while the Vienna Ozone Convention allows withdrawal after four years). In addition, withdrawal ordinarily requires advance notice many environmental conventions require one-year notice,⁶⁰ although LRTAP requires only 90 days' notice⁶¹).

Relation to other conventions

If a framework convention addresses an issue that is also addressed by other international agreements (for example, marine pollution), then it may include an article addressing

its relation to these other treaties. For example, the Barcelona Convention provides that its parties may enter into other agreements for the protection of the marine environment of the Mediterranean, so long as these agreements are consistent with it, and so long as these other agreements are communicated to the Barcelona Convention's secretariat.⁶² In contrast, LRTAP, the Vienna Ozone Convention, and the UNFCCC do not contain such a provision.

Depositary

The depositary of a treaty is "any State, organization or institution to which is entrusted the custody ... of the treaty and any ancillary instruments".⁶³ Ordinarily, the depositary is designated in the treaty itself (often in a separate article), although the negotiating States can, if they choose, do so in some other manner.⁶⁴

The depositary serves as the official record-keeper of a treaty. Its functions include:

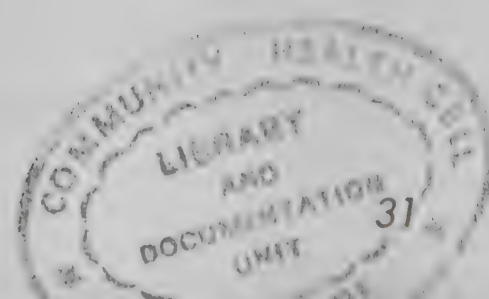
- keeping the original signed text of the treaty;
- receiving any signatures to the treaty and any instruments of ratification, acceptance, approval, or accession;
- informing the parties of acts, notifications and communications relating to the treaty;
- informing the States entitled to become party to the treaty when the number of signatures or ratifications required for entry into force has been received or deposited;
- receiving notifications of withdrawal and communications regarding the adoption and approval of annexes.

The depositary may be an international organization, the chief administrative officer of an organization (for example, the Secretary-General of the United Nations⁶⁵) or a State.⁶⁶ Elias notes that "it has become the established practice that, when a multilateral treaty is adopted within an international organization or at a conference convened under its auspices, the competent organ of the organization is designated as its depositary".⁶⁷

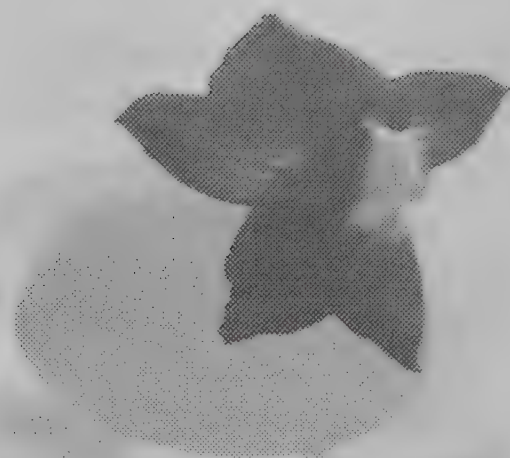
Authentic texts

If a convention is translated into different languages, the convention must specify which of these texts are authoritative ("authentic").⁶⁸ Conventions sponsored by the United Nations are generally (if not invariably) translated into all the United Nations' six official languages (Arabic, Chinese, English, French, Russian and Spanish), which are specified in the convention being "equally authentic" (meaning that, in interpreting the convention, no text is given preference over another).

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Protocols



Relationship between framework conventions and protocols

The term "protocol" is used to refer to a variety of international agreements. Although a protocol can be a free-standing legal agreement, generally the term "protocol" is used to refer to an international agreement that supplements, clarifies, amends or qualifies an existing international agreement (usually referred to as a "convention" or "treaty").⁶⁹ In some cases, the link between a protocol and a convention is a common subject matter. For example, the 1967 Refugee Protocol extends to additional categories of persons the protections set forth in the 1951 Refugee Convention, but is otherwise independent, and is open for signature and ratification by any State, not merely the parties to the Refugee Convention.

Box 12. Relationship: framework conventions and protocols

- Protocols are separate legal agreements, usually with their own final clauses
- But only convention parties can join protocols
- Issues:
 - Protocols adopted concurrently or subsequently?
 - Protocols mandatory or optional?
 - Protocols use same or different institutions?

In contrast, protocols to environmental framework conventions have been open only to States that are party to the parent convention, and thus are linked in terms of membership.⁷⁰

The relationship between framework conventions and protocols can vary in three respects. First, protocols may be adopted either concurrently with the framework convention or subsequently. In addition, they may be either mandatory or optional for convention parties. Finally, they may use the same institutions as the framework convention or establish separate institutions.

The 1975 Barcelona Convention illustrates the concurrent/mandatory approach to protocols. It was adopted concurrently with two of its protocols, one on ocean dumping and the other on oil spills.⁷¹ Moreover, a State that wishes to join the Barcelona Convention must

become a party to at least one of its protocols.⁷² Subsequent UNEP regional seas conventions have tended to follow this model.⁷³

Similarly, MARPOL's first five annexes (which are functionally equivalent to protocols) were adopted concurrently with MARPOL. Of these five annexes, two are mandatory (on oil pollution and noxious liquid substances in bulk) and the other three are optional.⁷⁴

In contrast, LRTAP, the Vienna Ozone Convention, and the UNFCCC were all adopted without any protocols, and do not require convention parties to be a party to any of their protocols.

Protocols typically use the same secretariat as their parent convention.⁷⁵ Some protocols utilize the same conference of the parties as their parent convention,⁷⁶ while others define separate meetings of the protocol parties.⁷⁷

Subject matter of protocols

Protocols may elaborate either the substantive commitments in a framework convention (for example, the Sulfur Protocol to LRTAP), or the convention's procedures or mechanisms (for example, the EMEP Protocol to LRTAP), or both. An example of the latter is the Montreal Protocol to the Vienna Ozone Convention, which establishes both substantive commitments to limit the production and consumption of ozone-depleting substances and new institutional mechanisms, including a Multilateral Fund and a non-compliance procedure.

In some environmental regimes, separate protocols are used to address individual aspects of the overall problem addressed by the framework convention. Thus the protocols to the Barcelona Convention address different sources of marine pollution: for example, ocean dumping, oil spills, and land-based sources. Similarly, the protocols to LRTAP divide up the problem of long-range transboundary air pollution into the different pollutants that contribute to the problem: for example, sulfur emissions, nitrogen oxides, and volatile organic compounds.

In contrast, the Montreal Protocol builds on the Vienna Ozone Convention in a comprehensive manner, by establishing stricter, more precise obligations, not by dividing up the problem into different component parts. The same is true of the Kyoto Protocol to the UNFCCC. During the negotiation of both the UNFCCC and the Kyoto Protocol, some States proposed that separate protocols be developed for each greenhouse gas (carbon dioxide, methane, etc.) or for each economic sector that contributes to climate change (energy, transportation, agriculture, forestry). But, instead, the protocol addresses the causes of climate change comprehensively, by establishing overall emission limitations for all greenhouse gases.

Conclusions



The framework convention/protocol approach is one (but, of course, not the only) model of international treaty-making. It has been used with considerable success in the environmental arena, and can be particularly useful when scientific understanding or political consensus is lacking to take strong substantive measures. In the case of tobacco, clearly the former is not the case: for over 50 years conclusive evidence, which demonstrates the profoundly negative health effects of tobacco, has been accumulating.⁷⁸

Box 13. Conclusions

- Framework convention/protocol approach is one (but not the only) model for international lawmaking
- Framework conventions can be more or less substantive - not a straitjacket
- This approach is useful when scientific understanding or political consensus lacking to take strong substantive measures

Framework conventions vary considerably in both their substantive and institutional provisions. The framework convention/protocol approach is not a strait-jacket, which might limit the range of options that States may consider. For example, States are not precluded from including detailed substantive provisions in the "framework" convention. Rather, the approach is simply a tool that States may find helpful in building consensus over time on the appropriate means of addressing a problem.

ANNEX

LIST OF SELECTED ENVIRONMENTAL FRAMEWORK CONVENTIONS AND PROTOCOLS

Short title

Long title and reference information

Barcelona Convention

Convention for the Protection of the Mediterranean Sea against Pollution, 16 February 1976, entered into force 12 February 1978; reproduced in *International legal materials*, 1976, 15:290.

Biodiversity Convention

Convention on Biological Diversity, 5 June 1992, entered into force 29 December 1993; reproduced in *International legal materials*, 1992, 31:818.

Cartagena Convention

Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, 24 March 1983, entered into force 11 October 1986; reproduced in *International legal materials*, 1983, 22:227.

Kyoto Protocol

Kyoto Protocol to the United Nations Framework Convention on Climate Change, 11 December 1997, not yet in force.

LRTAP

Convention on Long-range Transboundary Air Pollution, 13 November 1979, entered into force 16 March 1983; *United Nations Treaty Series*, 1983, 1302:217.

MARPOL

Convention for the Prevention of Pollution from Ships, 2 November 1973, Inter-Governmental Maritime Consultative Organization (IMCO) document MP/CONF/WP.35; reproduced in *International legal materials*, 1973, 12:1319. Note: MARPOL has never come into force, but is incorporated by reference in the 1978 Protocol relating to MARPOL, 17 February 1978, entered into force 2 October 1983; *United Nations Treaty Series*, 1983, 1341:3.

Montreal Protocol

Montreal Protocol on Substances that Deplete the Ozone Layer, 16 September 1987, entered into force 1 January 1989; reproduced in *International legal materials*, 1987, 26:1550.

SPREP

Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, 24 November 1986, entered into force 18 August 1990; reproduced in *International legal materials*, 1987, 26:38.

UNFCCC

United Nations Framework Convention on Climate Change, 9 May 1992, entered into force 21 March 1994; reproduced in *International legal materials*, 1992, 31:849.

Vienna Ozone Convention

Vienna Convention for the Protection of the Ozone Layer, 22 March 1985, entered into force 22 September 1988, UNEP document IG.53/5; reproduced in *International legal materials*, 1987, 26:1529.

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1. Lawrence E. Susskind, *Environmental Diplomacy: Negotiating more effective global agreements*, pp. 30-37 (New York: Oxford Univ. Press, 1994). In his discussion of the "convention-protocol" approach, Susskind also includes the 1973 Convention on International Trade in Endangered Species (CITES) and the International Convention for the Regulation of Whaling, both of which establish detailed regulatory regimes, rather than merely a general framework of governance.
2. Peter M. Haas, Robert O. Keohane & Marc A. Levy, eds., *Institutions for the earth: sources of effective international environmental protection* (Cambridge MA: MIT Press, 1994); Thomas Gehring, "International Environmental Regimes: Dynamic Sectoral Legal Systems," *Yearbook of International Environmental Law* – 1990, Vol. 1, p. 37 (London: Graham & Trotman, 1991); David Victor, Abram Chayes & Eugene Skolnikoff, "Pragmatic approaches to regime building for complex international problems," in *Global accord: Environmental challenges and international responses*, ed. by Nazli Choucri (Cambridge MA: MIT Press, 1993).
3. According to Marc Levy, when LRTAP was adopted "only two of its thirty members thought acid rain was a serious problem". Nevertheless, because the treaty did not contain "any explicit commitment ... felt to be significantly costly", States were willing to accept it. Marc A. Levy, "European Acid Rain: The Power of Tote-Board Diplomacy", in Haas, Keohane & Levy, note 3 above, p. 83.
4. The United States is one example.
5. See Levy, note 4 above.
6. Gehring, note 3 above, p. 38.
7. An extensive collection of concrete illustrations of various types of treaty provisions can be found in: Hans Blix & Jirina H. Emerson, *The treaty maker's handbook* (Dobbs Ferry, NY: Oceana Publications, 1973).
8. György Haraszti, *Some fundamental problems of the law of treaties*, pp. 106-07 (Budapest: Akadémiai Kiadó, 1973).
9. It is unclear whether a convention's "objective" is legally equivalent to its "object and purpose" under the Vienna Convention on the Law of Treaties. Under the Vienna Convention, States that have signed but not yet ratified a treaty nonetheless have a duty not to defeat the treaty's "objective and purpose"; moreover, a reservation to a treaty may not defeat the treaty's object and purpose. See Vienna Convention on the Law of Treaties, articles. 18, 31(1).
10. See also Biodiversity Convention, article 1 (setting forth the objectives of the Convention).
11. Ronald Dworkin, *Taking rights seriously*, pp. 24, 26 (Cambridge, MA: Harvard University Press, 1977).
12. United Nations General Assembly Resolution 45/212, 21 December 1990.
13. UNFCCC, article 4(2).
14. Daniel B. Magraw, "Legal treatment of developing countries: Differential, contextual and absolute norms", *Colorado Journal of International Environmental Law and Policy*, Vol. 1, No. 1, pp. 69-99 (Summer 1990).
15. Compare Montreal Protocol, article 5 (setting criteria of annual consumption of ozone-depleting substances of less than 0.3 kilograms per capita) with UNFCCC, Annex 1 (listing developed countries).
16. For example, the International Tropical Timber Agreement, or the recently-adopted UNEP/FAO Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 11 September 1998 (see <http://irptc.unep.ch/pic/h2.html>).

17. UNFCCC, article 6 ("Education, training and public awareness"); Biodiversity Convention, article 13 ("Public education and awareness").
18. LRTAP, article 7; UNFCCC, article 5 ("Research and systematic observation"); Vienna Ozone Convention, article 2(2)(a) ("General obligations"), article 3 ("Research and systematic observations").
19. LRTAP, article 4; UNFCCC, article 4(1)(g) (parties shall "promote and cooperate in the full, open and prompt exchange of relevant scientific, technological, technical, socio-economic, and legal information related to the climate system and climate change, and to the economic and social consequences of various response strategies").
20. Barcelona Convention, article 20 (requiring report on implementation measures); LRTAP, art. 8 (requiring "exchange of information" on, *inter alia*, emissions data; major changes in national policies; potential control technologies; and national, subregional and regional policies and strategies for pollution control); Vienna Convention, article 5 (requiring "transmission of information" on implementation measures).
21. Abram Chayes & Antonia Chayes, *The new sovereignty: Compliance with international regulatory agreements* (Cambridge MA: Harvard University Press, 1995).
22. UNFCCC, articles 4(1)(j), 12.
23. *Id.*, article 12(2).
24. *Id.*, article 4(3), (4).
25. *Id.*, article 3(1).
26. Biodiversity Convention, article 20(2).
27. UNFCCC, article 4(7); Biodiversity Convention, article 20(4).
28. For example, the 1940 Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (the "Western Hemisphere Convention"), (12 October 1940, *United Nations Treaty Series*, 1953, 161:193), has had very little effect, despite its strong substantive obligations, because it "neither requires its Parties to meet regularly in order to review implementation of the Convention..., nor requires them to submit regular reports on the domestic measures that they have taken to enforce its provisions.... In many areas the Convention has become a 'sleeping treaty' of little or no practical value...." Simon Lyster, *International Wildlife Law*, p. 110 (Cambridge, UK: Grotius Publications, 1985).
29. Vienna Ozone Convention, articles 6, 7.
30. UNFCCC, articles 7-11.
31. LRTAP, article 10(1).
32. See, e.g., UNFCCC, article 7.
33. One exception is the Montreal Protocol, which provides that its meetings of the parties may "adjust" existing control measures by a qualified majority vote. Montreal Protocol, article 2(9)(c).
34. See, e.g., Barcelona Convention, article 14; UNFCCC art. 7.
35. Barcelona Convention, article 18; UNFCCC, article 7(3); Vienna Ozone Convention, art. 6(3).
36. E.g., Barcelona Convention, article 13; Vienna Ozone Convention, article 7.
37. Rosemary Sandford, "International environmental treaty secretariats: Stage-hands or actors?" *Green globe yearbook - 1994*, pp. 17-29 (Oxford: Oxford University Press, 1995).

38. UNFCCC, article 8.
39. UNFCCC, article 9 (establishing "Subsidiary body for scientific and technological advice"); Biodiversity Convention, article 25 (establishing "Subsidiary body on scientific, technical and technological advice").
40. UNFCCC, article 10.
41. UNFCCC, article 11; Biodiversity Convention, article 21.
42. See, e.g., Protocol to the Convention on Long-range Transboundary Air Pollution on Long-term Financing of the Co-operative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP Protocol), 28 September 1984, entered into force 28 January 1988, reproduced in *International legal materials*, 1988, 27:701 ; 1994 Protocol to LRTAP on Further Reductions of Sulphur Emissions, article 7, 14 June 1994, article 7. (Establishing implementation committee to review implementation of the Protocol and compliance by the parties); reproduced in *International legal materials*, 1994, 33:1542.
43. Barcelona Convention, article. 10 (parties undertake to formulate, adopt and implement such annexes as may be required to prescribe common procedures and standards for pollution monitoring).
44. *Id.*, article 12 (parties undertake to cooperate in formulating and adopting procedures for the determination of liability and compensation).
45. *Id.*, article 21 ("The Contracting Parties undertake to cooperate in the development of procedures enabling them to control the application of this Convention and the Protocols").
46. Vienna Ozone Convention, article 11(4); UNFCCC, article 14(5).
47. UNFCCC, article 13.
48. Barcelona Convention, article. 16; LRTAP, article 12; Vienna Ozone Convention, article 9; UNFCCC, article 15.
49. Vienna Ozone Convention, articles. 8-10.
50. UNFCCC, article 17.
51. For more information on signature, ratification, and entry into force, see Allyn Taylor & Daniel Bodansky, *The development of the WHO Framework Convention on Tobacco Control: Legal and policy considerations*, WHO Background Paper, Nov. 1998.
52. *Id.*, article 20.
53. LRTAP, article 14 (United Nations Office at Geneva); UNFCCC, article 20 (Rio de Janeiro, during the United Nations Conference on Environment and Development, and thereafter at United Nations headquarters in New York); Vienna Ozone Convention, article 12 (Austrian Ministry for Foreign Affairs).
54. LRTAP, article 14(1); Vienna Ozone Convention, art. 12; UNFCCC, article 20.
55. See Vienna Convention on the Law of Treaties, 23 May 1969, entered into force 27 January 1980, articles 14 and 15; *United Nations Treaty Series*, 1980, 1155: 331.
56. Vienna Ozone Convention, article 17; UNFCCC, article 23.
57. UNFCCC, article 25; Vienna Ozone Convention, article 18; see also Basel Convention on the Transboundary Movements of Hazardous Wastes and Their Disposal, article 26(1); 1991 Protocol on Environmental Protection to the Antarctic Treaty, 4 October. 1991, article 24.
58. Vienna Convention on the Law of Treaties, article 19.
59. LRTAP, article 17; Vienna Ozone Convention, article 19; UNFCCC, article 25; Barcelona Convention, article 28.

60. Vienna Ozone Convention, article 19; UNFCCC, article 25.
61. LRTAP, article 17.
62. Barcelona Convention, article 3(1).
63. T.O. Elias, *The modern law of treaties*, p. 209 (Dobbs Ferry, NY: Oceana Publications, 1974).
64. Vienna Convention on the Law of Treaties, article 76.
65. UNFCCC, article 19; Vienna Ozone Convention, article 20.
66. Barcelona Convention, article 25 (designating Spain as the depositary).
67. Elias, note 64 above, at p. 210.
68. Authentication is addressed by article 10 of the Vienna Convention on the Law of Treaties.
69. Congressional Research Service, *Treaties and other international agreements: The role of the United States Senate*, Appendix 6: Glossary of Treaty Terminology, S. Prt. 103-53 (November 1993).
70. Barcelona Convention, article 23(1); UNFCCC, article 17(4).
71. Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft (Barcelona Convention Dumping Protocol), 16 February 1976, reproduced in *International legal materials*, 1976, 15:300; Protocol concerning Co-operation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency, 16 February 1976; reproduced in *International legal materials*, 1976, 15:306.
72. Barcelona Convention, article 23(1) ("No one may become a Contracting Party to this Convention unless it becomes at the same time a Contracting Party to at least one of the protocols.").
73. See, e.g., Cartagena Convention, article 24 (requiring convention parties to be party to at least one protocol) (adopted concurrently with oil spills protocol); SPREP Convention, article 27 (same) (adopted concurrently with dumping protocol).
74. MARPOL, articles 13-14; Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, article 2 (delaying effective date of Annex II for a period of three years from Protocol's entry into force).
75. E.g., Montreal Protocol, article 12.
76. For example, the protocols to LRTAP do not establish separate institutional arrangements, and are overseen by the Executive Body of LRTAP.
77. E.g., Montreal Protocol, article 11; Barcelona Convention Dumping Protocol, article 14.
78. Derek Yach, *Progress towards global tobacco control*, paper presented to the Joint PAHO/WHO/NHLBI/FIC 50th Anniversary Conference on Global Shifts in Disease Burden: The Cardiovascular Pandemic, Pan American Health Organization, Washington, DC, 1998.

Framework Convention on Tobacco Control



The Tobacco Free Initiative is a new WHO cabinet project created with the express aim of focusing international attention and resources on the global tobacco epidemic - the cause of a vast and entirely avoidable burden of disease.

